

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DOUGLAS J. HORN and CINDY HARP-HORN,

Plaintiffs,

-against-

Civil Action No.  
15-cv-701 FPG/MJR

MEDICAL MARIJUANA, INC., DIXIE ELIXIRS  
AND EDIBLES, RED DICE HOLDINGS, LLC and  
DIXIE BOTANICALS,

Defendants.  
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805 Third Avenue  
New York, New York

December 12, 2017  
10:06 A.M.

EXAMINATION BEFORE TRIAL OF DR. CINDY ORSER,  
an Expert Witness appearing on behalf of the  
Defendants herein, taken pursuant to Notice, and  
held at the above time and place before Terri  
Fudens, a Stenotype Reporter and Notary Public of  
the State of New York.

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2 the article. It's the second page of the exhibit,  
3 but it's page 9 of the article under the heading  
4 the major plant Cannabinoids, do you see that?

5 A Yes.

6 Q And the sentence says  
7 tetrahydrocannabinol, otherwise known as THC. I  
8 should say THC is in parentheses, is a powerful  
9 psychoactive agent, analgesic, muscle relaxant,  
10 antispasmodic, neuroprotective antioxidant that  
11 delivers 20 times the anti-inflammatory power of  
12 aspirin and twice the power of Hydrocortisone.

13 Do you see that paragraph?

14 A Yes.

15 Q THC is a wonder drug; isn't it?

16 MR. SHEPS: Objection as to  
17 form.

18 Q Can you answer the question?

19 A It's pretty amazing.

20 Q Did you ever describe marijuana as a  
21 wonder drug?

22 A No.

23 Q Are you an advocate of keeping THC in  
24 formulated cannabis products?

25 A Yes.

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2 Q Why?

3 A Well, to the best of our knowledge,  
4 THC is a key contributor to the effectiveness of  
5 cannabis. So removing THC from cannabis per se  
6 wouldn't make sense.

7 Q Is it fair to say that a product, and  
8 I mean a formulated product, we're talking about a  
9 formulated product in this case, would be  
10 ineffective without any THC?

11 A No.

12 Q What then makes a product effective  
13 without THC? What component of a formulated  
14 Medical Marijuana product would make it effective  
15 without THC?

16 A CBD.

17 MR. SHEPS: Objection.

18 Q Okay. CBD is not a Schedule 1 drug;  
19 correct?

20 MR. SHEPS: Objection.

21 A I don't believe so.

22 Q Are you aware of the Schedule 1  
23 substances?

24 A I think there's three.

25 Q There are three in your line of work,

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2 allowed is what?

3 MR. SHEPS: Objection.

4 A Less than .3 percent.

5 Q Where is that standard from?

6 A Before 2014, I'm not sure.

7 Q Less than .3 percent only came to be  
8 a requirement post 2014?

9 MR. SHEPS: Objection.

10 A I'm associating it with the Farm  
11 Bill, but that might not be accurate.

12 Q Do you know the original source of  
13 that .3 threshold that you mentioned?

14 A I don't.

15 Q What does that .3 threshold apply to  
16 exactly, levels of what in what?

17 A .3 percent of THC.

18 Q In what?

19 A In the raw -- the raw plant, the  
20 extracted plant. Whatever the hemp product is.

21 Q Well, is it the raw hemp plant, or is  
22 it some other product?

23 A Well, people aren't going to import  
24 raw hemp. They're going to be importing extract.

25 Q Well, didn't this paragraph suggest

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2 so I don't really know if they're related.

3 Q So this product that -- this was one  
4 of the things that -- these four pages were what  
5 you reviewed as a basis for your opinions in your  
6 report; correct?

7 A Yes.

8 Q Who provided you these?

9 A It was in the Messner Reeves  
10 documents.

11 Q These are not specific as to a lot of  
12 the product?

13 A Correct.

14 Q So as I think you just stated, these  
15 do not correspond to the product that Mr. Horn  
16 says that he took between October 1 and October 9,  
17 2012; right?

18 A Correct.

19 Q Would it have been useful to you to  
20 get the Certificates of Analysis that did apply to  
21 that particular product?

22 A Yes.

23 Q Did you ask for those particular  
24 Certificates of Analysis?

25 A Apparently they don't exist.

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2 Analysis in front of you were a representative --  
3 were as to a representative sample of that which  
4 was on the market on October 1, 2012?

5 MR. SHEPS: Objection.

6 MR. BORON: Objection as to  
7 form.

8 A I don't know.

9 Q So we don't even know if what was  
10 tested here on these Certificates of Analysis was  
11 even a representative sample; correct?

12 A Correct.

13 MR. BORON: Objection as to  
14 form.

15 MR. SHEPS: Objection.

16 Q I guess the question is then why do  
17 you think these would be useful in determining the  
18 THC content of the Dixie Elixir product at issue  
19 here?

20 A I found this relevant because it  
21 demonstrates that Dixie was complying with the  
22 requirements in the State of Colorado, that their  
23 products are below the .3 percent THC.

24 Q That .3 percent is a Colorado  
25 threshold?

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2 A It's Colorado, but it's also the Farm  
3 Bill; right? But it is Colorado.

4 Q Back in 2012, the Farm Bill didn't  
5 apply; right?

6 A Right.

7 Q So back in 2012, was .3 percent a  
8 state legal limit for THC in Colorado?

9 MR. SHEPS: Objection.

10 A That was my assumption.

11 Q We had to get the .3 percent from  
12 somewhere. It's not your testimony that it came  
13 from the Controlled Substances Act; right?

14 MR. BORON: Objection as to  
15 form.

16 MR. SHEPS: Objection.

17 A I can't clarify that without looking  
18 at the document.

19 Q To your knowledge, in 2012, say in  
20 the month of October of 2012, there was no maximum  
21 legal limit for THC in the State of New York;  
22 correct?

23 MR. SHEPS: Objection.

24 A I don't know.

25 Q Do you have an idea of whether -- if



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2 the reason for you not having the specific  
3 Certificates of Analysis had anything to do with  
4 CannLabs' closure as a business?

5 MR. BORON: Objection to form.

6 A I can't say.

7 Q As you sit here today, you don't know  
8 where CannLabs records would be held?

9 A I don't know.

10 Q Do you think that Jennifer Murray  
11 would be able to tell me?

12 MR. BORON: Objection to the  
13 form.

14 A I don't know.

15 Q Do you have any reason to believe  
16 with your testimony as to the relevance of this  
17 that this can be relied upon as an accurate  
18 measure of THC in the product of October 1, 2012?

19 MR. BORON: Objection as to  
20 form.

21 MR. SHEPS: Objection.

22 A I can't really say that either.

23 Q Okay. What are batch records as  
24 compared to Certificate of Analysis?

25 A So a batch record would be for



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2 whatever the batch size is, whatever that unit is.

3 So batch is -- usually the cured flower is a

4 batch, or a bulk extraction is a batch. This is a  
5 finished product.

6 Q Would there have been batch records  
7 with respect to both the product that was tested  
8 on October 16 and the one that was tested back on  
9 October 1, 2012?

10 A That's a question for CannLabs and  
11 Dixie. I don't know the answer.

12 Q Is that something that you would have  
13 liked to have seen for this report?

14 A Yes.

15 Q Did you ask them for that?

16 MR. BORON: Objection as to  
17 form.

18 MR. SHEPS: Objection.

19 A I did not.

20 Q To clarify, the batch records have to  
21 do with the quantity of the sample that's provided  
22 to make these Certificates of Analysis; is that a  
23 proper statement?

24 A It's just upstream of a finished  
25 product. So, you know, if you're Stouffer and

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2 you're manufacturing frozen lasagna, first you  
3 have to cook the noodles, right, and then you have  
4 to make the sauce. Then you have your final  
5 product, which is the lasagna.

6 Q Gotcha. But batch records don't talk  
7 about THC, right, to your knowledge?

8 MR. SHEPS: Objection.

9 A To my knowledge for them, I don't  
10 know.

11 Q Did you at all find it unusual that  
12 they gave you these Certificates of Analysis for a  
13 different product?

14 A Well, yes.

15 MR. BORON: Objection as to  
16 form.

17 Q Okay. Looking at the actual face of  
18 these documents, if you would, the first page of  
19 Graham 13, Graham Exhibit 13, does show what you  
20 stated as the maximum legal limit for THC --  
21 excuse me, to .3 percent, 0.3 percent?

22 A Yes.

23 Q And next to it it says asterisk,  
24 undetectable, and the asterisk seems to refer to  
25 the asterisk explanation underneath. It says:

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2 .05 and .04 are less than .3; correct?

3 A Correct.

4 Q However, those numbers indicate some  
5 quantity of THC; right?

6 A Detectable, even though right here  
7 they say if it's below .1, it's not detectable,  
8 even though they're reporting it later.

9 Q When you say reporting it later, are  
10 you talking about the .05 percent?

11 A On the first page it says  
12 undetectable. It defines undetectable as below  
13 0.1, but yet on the last two pages, they're  
14 reporting a value of less than .1. The .04 and  
15 .05 percent.

16 Q So there is, at least with respect to  
17 the .05, a detectable amount of THC; correct?

18 MR. BORON: Objection as to  
19 form.

20 A It's being reported.

21 Q And it doesn't say undetectable  
22 there; right?

23 A Right.

24 Q So that is some quantity of THC in at  
25 least these Certificates of Analysis?

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2 industrial hemp, that this was the final  
3 formulated product?

4 MR. BORON: Objection to form.

5 MR. SHEPS: Objection.

6 A It says 500 milligrams. It gives a  
7 sample size. I'm assuming it was the formulated  
8 product.

9 Q Were you ever supplied the product  
10 from Dixie or Medical Marijuana or anybody?

11 A No.

12 Q Okay. Moving on to page 4 of your  
13 report.

14 MR. SHEPS: Can we take a brief  
15 break?

16 MR. BENJAMIN: Okay.

17 (At this time, a brief recess  
18 was taken.)

19 MR. SHEPS: I just want to  
20 clarify something for the record.  
21 Jeff, we had spoken just a moment ago  
22 about the exhibit marked as Orser D  
23 which was an internal chain of  
24 custody with an order ID 281201415  
25 dated October 29, 2012.

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2 together; right?

3 A Yes.

4 Q What state are you talking about  
5 there?

6 A Colorado.

7 Q And because that's the state where we  
8 believe the product was manufactured; correct?

9 A Correct.

10 Q You're saying that there's also a  
11 federal limit of the .3 percent. You see that  
12 there?

13 A Yes.

14 Q As you sit here today, you don't know  
15 the source of that maximum threshold for the THC  
16 guideline?

17 A Not in 2012.

18 Q But in 2014, it was the Farm Bill?

19 A Yes.

20 Q And in that statement, implicit in  
21 that statement, because you haven't stated it  
22 specifically, you're applying that .3 percent  
23 threshold to the final formulated Dixie product at  
24 issue here?

25 A Yes.

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2 form. What numbers?

3 MR. BENJAMIN: I just stated  
4 them. 170 as opposed to 500 in the  
5 Certificates of Analysis.

6 MR. BORON: 500 what?

7 MR. BENJAMIN: 500 parts per  
8 million.

9 THE WITNESS: .05.

10 MR. BENJAMIN: That's the .05  
11 number.

12 Q Given that, given what evidence of  
13 chain of custody are there or adulteration issues  
14 is there with that kind of ratio?

15 MR. SHEPS: Objection.

16 MR. BORON: Objection as to  
17 form.

18 A It's just the comparability. These  
19 aren't C of As for the product Mr. Horn took.  
20 We've never seen the product Mr. Horn took. The  
21 product he took was never tested. This is another  
22 version of the product at a later date. We don't  
23 know if they changed, how they did anything.  
24 There's a degree of uncertainty here.

25 Q You mentioned -- do you feel that the

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2 A Yes.

3 Q Now I submit to you that HempMeds PX  
4 has been stated to be the company that was  
5 offering the Dixie Botanicals brand. Pursuant to  
6 a letter that the Horns actually received.

7 But looking simply at the information  
8 in that frequently asked question, that is  
9 actually an FAQ with respect to workplace drug  
10 screening; correct?

11 A Yes.

12 Q If I told you that the Dixie  
13 Botanical FAQs have changed over the years to  
14 include that, that language, would that indicate  
15 to you that Dixie, and here HempMeds, was aware  
16 that THC produced -- that THC was in their product  
17 and produced positive test results?

18 MR. BORON: Objection to form.

19 MR. SHEPS: Objection.

20 A I would interpret this that they knew  
21 there could be some THC, but they were making  
22 efforts to have THC free products.

23 Q As of the date of the posting of  
24 those FAQs; correct?

25 MR. BORON: Objection as to